

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Capital Network Systems, Inc.	CC Docket No. 91-326
Conquest Telecommunications, Inc.	CC Docket No. 91-327
Com Systems, Inc.	CC Docket No. 91-329
International Pacific, Inc.	CC Docket No. 91-330
Peoples Telephone Co., Inc.	CC Docket No. 91-331
U.S. Long Distance, Inc.	CC Docket No. 91-335

ORDER

Adopted: January 15, 1992; Released: January 24, 1992

By the Commission:

I. INTRODUCTION

1. On November 8, 1991, the Common Carrier Bureau issued orders directing 12 interstate operator service providers (OSPs) whose rates, the Bureau found upon review, appear to be unjust and unreasonable, to demonstrate the reasonableness of their rates (or reduce their rates) and to announce at the beginning of each call handled by the OSP that its rates are available on request.¹ The captioned

OSPs have requested stay of the announcement requirement imposed by the *Rate Review Orders* pending Commission consideration of applications for review of those orders.² Petitioners have not sustained their burden of demonstrating that the requested stay is warranted. We therefore deny the petitions for stay.

II. BACKGROUND

2. The Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) requires, *inter alia*, that OSPs file informational tariffs containing their rates and charges.³ If the rates and charges filed by a particular OSP appear, upon review by the Commission, to be unjust or unreasonable, the Commission may require the OSP to demonstrate that its rates are just and reasonable.⁴ The Commission may also require the OSP to announce, at the beginning of each call that it handles, that its rates are available upon request.⁵ In other words, the Act does not establish the announcement requirement as a sanction to be imposed only in the event that the Commission finally determines that an OSP's rates are unjust or unreasonable. Rather, we are authorized to impose this announcement requirement instead of or in conjunction with the requirement that the OSP demonstrate that its rates are just and reasonable. The Commission thus may use the announcement requirement in order to afford consumers a degree of protection in the event that the rates contained in an OSP's informational tariff appear to be unjust and unreasonable. By contrast, if rates filed by a common carrier in a traditional tariff appear to be unjust or unreasonable, the Commission may protect the public by suspending the tariff pending investigation.

3. In addition to the obligation to file informational tariffs mentioned above, TOCSIA imposes various information disclosure and operating requirements on OSPs and call aggregators and charges the Commission with the responsibility of monitoring and regulating the activities of OSPs and aggregators. In discharging our duties under TOCSIA, we have initiated several proceedings including a rate compliance proceeding which TOCSIA requires us to conduct.⁶ As part of that proceeding, the Bureau has directed OSPs to file periodic reports detailing their rates, complaints concerning their service, and the costs that

¹ Advanced Technology Cellular Telecommunications, CC Docket No. 91-324, DA 91-1379, released Nov. 8, 1991 (Com.Car.Bur.); Cherokee Communications, Inc., CC Docket No. 91-325, DA 91-1380, released Nov. 8, 1991 (Com.Car.Bur.); Capital Network Systems, Inc., CC Docket No. 91-326, DA 91-1381, released Nov. 8, 1991 (Com.Car.Bur.); Com Systems, Inc., CC Docket No. 91-329, DA 91-1384, released Nov. 8, 1991 (Com.Car.Bur.); Conquest Telecommunications Services, CC Docket No. 91-327, DA 91-1382, released Nov. 8, 1991 (Com.Car.Bur.); CPS Operator Services, Inc., CC Docket No. 91-328, DA 91-1383, released Nov. 8, 1991 (Com.Car.Bur.); International Pacific, Inc., CC Docket No. 91-330, DA 91-1385, released Nov. 8, 1991 (Com.Car.Bur.); Peoples Telephone Company, Inc., CC Docket No. 91-331, DA 91-1386, released Nov. 8, 1991 (Com.Car.Bur.); South Texas Phone, Inc., CC Docket No. 91-332, DA 91-1387, released Nov. 8, 1991 (Com.Car.Bur.); TelTrust, Inc., CC Docket No. 91-333, DA 91-1388, released Nov. 8, 1991 (Com.Car.Bur.); U.S. Fiberline Communications, CC Docket No. 91-334, DA 91-1389, released Nov. 8, 1991 (Com.Car.Bur.); U.S. Long Distance, Inc., CC

Docket No. 91-331, DA 91-1390, released Nov. 8, 1991 (Com.Car.Bur.) (*Rate Review Orders*).

² The six petitioners have filed three pleadings which request essentially identical relief. On November 13, 1991, Capital Network Systems, Inc. (CNS) filed an "Emergency Motion for Stay" (CNS Motion). On the same day, Conquest Telecommunications, Inc. (Conquest), Com Systems, Inc. (CSI), International Pacific, Inc. (IPI), and U.S. Long Distance, Inc. (USLD) jointly filed a pleading which they style "Motion for Stay of Branding Requirements" (IPI Petition). Finally, on November 15, 1991, Peoples Telephone Company (PTC) filed an "Emergency Petition for Stay" (PTC Petition). No responsive pleadings have been filed.

³ See 47 U.S.C. § 226(h)(1)(A). TOCSIA is codified as Section 226 of the Communications Act of 1934.

⁴ See 47 U.S.C. § 226(h)(2)(A).

⁵ See 47 U.S.C. § 226(h)(2)(B).

⁶ We initiated this proceeding as Phase II of CC Docket No. 90-313. Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Further Notice of Proposed

they incur in providing service to the public.⁷ The OSPs' reports must also include a report of sample charges that the OSP would assess for certain calls that are typical of operator assisted calls handled by American Telephone and Telegraph Company (AT&T). These reports serve principally to assist us in fulfilling monitoring and reporting responsibilities under Section 226(h)(3) of the Act. 47 U.S.C. § 226(h)(3). In addition, however, these reports provide valuable data for our review of the informational tariffs.

4. Review of the informational tariffs and reports of sample charges filed by the captioned OSPs revealed that these OSPs would assess as much as \$8.71 for an eight-minute call.⁸ The Bureau concluded that these rates appear to be unjust and unreasonable and therefore directed petitioners either to demonstrate that their rates are just and reasonable or to reduce their rates to a just and reasonable level.⁹ In addition, the Bureau directed petitioners to begin announcing, at the beginning of each call that they handle, that their rates and charges are available upon request.¹⁰ Petitioners' requests for stay of the announcement requirement followed.

III. PLEADINGS

5. Petitioners argue that they are entitled to a stay of the announcement requirement under the four-part test that has been used by the courts and this Commission.¹¹ Petitioners assert that they are likely to succeed on the merits in seeking permanent equitable relief from this Commission or a court. Petitioners also argue that they will be irreparably harmed absent a stay. In contrast, petitioners contend, no other party would be harmed by grant of a stay. Finally, petitioners assert that the public interest would be served by grant of the requested stay.

6. Petitioners argue that this Commission or a reviewing court is likely to reverse the Bureau's imposition of the announcement requirement. CNS contends, for example, that the Bureau's alleged failure to consider CNS's cost data renders the imposition of the announcement

requirement arbitrary and capricious. CNS Motion at 7-10. CNS also contends that the Bureau's action denies CNS procedural due process. *Id.* at 10-16.¹² IPI advances a similar position and further suggests that the *Rate Review Orders* are overbroad because they would require petitioners to announce that their rates are available upon request at the beginning of each call that petitioners handle. IPI suggests that the Bureau did not find that petitioners' rates for each call they handle appear unreasonable and that the announcement requirement is therefore likely to be reversed on review. IPI Petition at 10-16.

7. Petitioners also assert that they will suffer irreparable harm if we do not grant the requested stay. Petitioners cite the cost of complying with the announcement requirement, which they contend they will be unable to recoup. CNS Petition at 16-17. Petitioners also assert that they will suffer competitive harm if they must comply with the announcement requirement. *Id.* at 17-19; IPI Petition at 16-17; PTC Petition at 5-7. CNS and IPI also argue that other interested parties would not be harmed by grant of the requested relief. CNS Petition at 19; IPI Petition at 17-18. Finally, petitioners argue that the public interest either will not be harmed by a stay or will actually be furthered by grant of their petitions. They argue that OSPs are already required by TOCSIA to post a notice that their rates are available upon request on or near the telephone instrument. They therefore conclude that a stay of the announcement requirement will serve the public interest. CNS Petition at 20-21; IPI Petition at 18-19; PTC Petition at 9-10.

IV. DISCUSSION

8. We deny the petitions for stay of the announcement requirement imposed by the *Rate Review Orders*. Petitioners have not demonstrated that this requirement will cause them irreparable harm. Petitioners have made no showing as to the cost of complying with the announcement requirement nor have they demonstrated that they would be unable to recover any added costs this requirement might impose.¹³ The announcement requirement is

Rulemaking, 6 FCC Rcd 120 (1990).

⁷ Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Phase II, 6 FCC Rcd 2314 (Com.Car.Bur. 1991) (*OSP Reporting Requirements Order*).

⁸ See Conquest Telecommunications, Inc., CC Docket No. 91-327, DA 91-1382, released Nov. 8, 1991 (Com.Car.Bur.). The highest rates reported by the other five petitioners were, in descending order: CSI -- \$8.09; PTC -- \$7.85; IPI -- \$7.70; CNS -- \$7.64; and USLD -- \$7.54.

⁹ Eight of the 12 OSPs that the Bureau directed to submit rate justifications subsequently revised their tariffs to reduce their rates or filed additional information. The Bureau found that these eight OSPs no longer charge rates that prompted these proceedings. It therefore terminated the proceedings it had initiated with respect to these eight OSPs. See Cherokee Communications, Inc., CC Docket No. 91-325, DA 91-1547, released Dec. 13, 1991 (Com.Car.Bur.); Advanced Technology Cellular Telecommunications, CC Docket No. 91-324, DA 91-1615, released Dec. 23, 1991 (Com.Car.Bur.); Com Systems, Inc., CC Docket No. 91-329, DA 91-1617, released Dec. 23, 1991 (Com.Car.Bur.); Conquest Telecommunications Services, CC Docket No. 91-327, DA 91-1616, released Dec. 23, 1991 (Com.Car.Bur.); South Texas Phone, Inc., CC Docket No. 91-332, DA 91-1618, released Dec. 23, 1991 (Com.Car.Bur.); TelTrust, Inc., CC Docket No. 91-333, DA 91-1619, released Dec. 23, 1991 (Com.Car.Bur.); U.S.

Fiberline Communications, CC Docket No. 91-334, DA 91-1620, released Dec. 23, 1991 (Com.Car.Bur.); U.S. Long Distance, Inc., CC Docket No. 91-331, DA 91-1614, released Dec. 23, 1991 (Com.Car.Bur.). The remaining four OSPs -- CNS, CPS, IPI, and PTC -- were required to submit their justifications on December 23, 1991.

¹⁰ The Bureau directed petitioners to begin making this announcement within ten days of release of the *Rate Review Orders*. The Bureau later delayed the effective date of this requirement to December 18, 1991, in order to allow OSPs sufficient time to make the technological changes needed to make the announcement. *Advanced Technology Cellular Telecommunications*, CC Docket No. 91-324, *et al.*, DA 91-1438, released Nov. 15, 1991 (Com.Car.Bur.). The Bureau later postponed the announcement requirement to January 15, 1992. *Advanced Technology Cellular Telecommunications*, CC Docket No. 91-324, *et al.*, DA 91-1548, released Dec. 13, 1991 (Com.Car.Bur.).

¹¹ See *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Co. v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977).

¹² PTC concurs in these arguments and incorporates CNS's petition in its petition by reference. PTC Petition at 7-9.

¹³ Cf. *Washington Metropolitan Area Transit Co. v. Holiday Tours*, *supra*, 559 F.2d at 843 where the Court found that

simply a cost of doing business in the regulated OSP market and is a cost that can be passed along to customers. Further, we are not convinced by petitioners' assertions that other parties and the public interest would not be harmed by grant of the stay.¹⁴ In light of the apparent unreasonableness of the petitioners' rates, failure by the petitioners to provide an explicit announcement regarding the availability of rate information would be likely to deny consumers the opportunity to make an informed choice regarding the level of charges they will incur for operator services.

9. Accordingly, IT IS ORDERED that the emergency motion for stay filed by Capital Network Systems, Inc.; the motion for stay filed by Conquest Telecommunications, Inc., Com Systems, Inc., International Pacific, Inc., and U.S. Long Distance, Inc.; and the emergency petition for stay filed by Peoples Telephone Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

petitioner had demonstrated irreparable harm in "its destruction in its current form." Petitioners have not made a comparable showing.

¹⁴ We affirm the proposition that "[i]n litigation involving the

administration of regulatory statutes designed to promote the public interest, this factor necessarily becomes crucial." *Virginia Petroleum Jobbers v. FPC*, *supra*, 259 F.2d at 925.